

REGULAR MEETING  
March 15, 1999

CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Council Chambers, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, March 15, 1999, at 5:43 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Dennis Doyle, Forrest Soth, and Cathy Stanton. Coun. Evelyn Brzezinski arrived during the Executive Session. Coun. Wes Yuen was excused. Also present were City Attorney Mark Pilliod, Chief of Staff Linda Adlard, Human Resources Director Sandra Miller, Assistant City Attorney Bill Kirby and City Recorder Darleen Cogburn.

EXECUTIVE SESSION:

Coun. Soth MOVED, SECONDED by Coun. Doyle that Council move into executive session in accordance with ORS 192.660 (1) (h), to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed and in accordance with ORS 192.660 (1) (d) to conduct deliberations with persons designated by the governing body to carry on labor negotiations. Couns. Doyle, Soth and Stanton voting AYE, the motion CARRIED unanimously. (3:0)

The executive session convened at 5:44 p.m.

The executive session adjourned at 6:17 p.m.

RECESS:

Mayor Drake called for a recess at 6:17 p.m.

RECONVENED:

The regular meeting reconvened at 6:47 p.m.

Also present at the regular meeting were Finance Director Patrick O'Claire, Community Development Director Joe Grillo,

Operations/Maintenance Director Steve Baker, Police Chief David Bishop, Library Director Shirley George, Engineering Department Director Tom Ramisch, Development Services Manager Irish Bunnell, City Utilities Engineer David Winship, Assistant City Attorney Ted Naemura, Redevelopment Project Manager John Engel, Associate Planner Jeff Salvon, Police Captain Paul Danko, and Support Specialist II Deborah Baidenmann.

CITIZEN COMMUNICATION:

Jim McFarland, 17352 NW Autumn Ridge, said he was the Beaverton area manager for General Telephone (GTE). He said he would like to address the Telecommunications Ordinance on the agenda for that night. He explained that GTE reviewed the ordinance in its present form and it had not addressed their concerns. He commented that they had only received the ordinance on March 10, but had been involved in the process of reviewing the ordinance since December 1997. He said they had provided written request (per the City's request) on December 1, 1998 that expressed their specific concerns in detail. He noted they had not received a response to their letter nor had the opportunity to discuss their concerns. He requested to go on record that GTE objected to the ordinance in its present format and he submitted a letter into the record. He specified that they would like more time to work out their concerns and differences. He stated that a significant concern was the assessed fees issue in the new ordinance. He said under current Oregon Statute the City was allowed to assess GTE a privilege tax not to exceed seven percent and the ordinance would add an additional seven percent franchise fee bringing a total assessment fee of 14 percent. He concluded by saying GTE was curious as to what authority allowed the City to assess an additional seven percent fee, and he hoped they could work with the City to resolve differences without legal involvement.

Mark Pilliod, City Attorney, said it might be best to see what the letter said, but his understanding was the fee that was imposed under the ordinance was consistent and not on top of the tax that was otherwise allowable under Oregon Law. He established that it was not the City's intention to double that fee, but to maintain consistency with the State law.

Coun. Stanton asked when the letter was dated that went to the City.

McFarland replied it was December 1, 1998 and gave a copy of the letter to the City Recorder for distribution to Council (in the record).

Dick Schouten, 6105 SW 148<sup>th</sup> Ave., said he represented the West Beaverton NAC and would first let the others speak regarding AB 99-68, RZ 980001 K Appliance Rezone on Murray.

Tae J. Rhee, 3236 NE 18<sup>th</sup> Ave., Portland, said he was an attorney and was there that evening as a friend of Song Hwan Tae, a family friend, who had an application with the Planning Commission (PC) which was denied

for a rezone. He noted they were there to ask for the extraordinary request to remove the two items from the agenda (99-68 RZ 980001 K Appliance Rezone on Murray and 99-69, VAR 98001 K Appliance on Murray). He said they realized Mr. Tae had the opportunity to appeal, but they believed that it would be in his, the neighborhood's and the City's best interest to revisit those applications that evening. He said when Tae bought the property he was given incorrect information from the developer and the contractor. He said the property was sandwiched between two commercial sites, and if it was left as a residential property it would become an instant slum, which would not be in anyone's best interest.

Schouten said when Tae attended two NAC meetings, he was represented by a law firm. He explained the NAC felt their role had been to hear what he had to say and give their thoughts about the development. He said the NAC thought it was very positive and it had been an eyesore, and it would provide a service that would be useful in the community. He said in retrospect he wished Tae's attorney would have properly noticed the hearing so there would not have been a need for a second neighborhood meeting and secondly the attorney should have called the NAC and woven the positive NAC testimony into the presentation for the PC. He commented the NAC might have been able to take on the appeal and save Tae some costs. He said as the NAC Chair, he thought he should stand by and support Tae, and do whatever he could.

Mayor Drake said they appreciated Schouten being there.

Joe Grillo, Community Development Director, said staff was not prepared to argue the case that evening. He said the PC deliberated on both actions and there was a public hearing on two occasions. He noted the PC deliberated and felt facts did not carry sufficient weight to forward a favorable opinion to Council. He noted there was ample time for an appeal and if staff needed to do something more they would certainly stand ready in the future to make the process better.

Rhee said he did not mean to imply that the misrepresentations came from the staff.

Mayor Drake said he thought it was understood that was not the case and felt it was clear the misrepresentations came from the contract between Tae and whomever he was doing business with at that time.

Rhee said they were not asking for Council to make a determination as to the merits of the application but to take it off the agenda to have a wider focus rather than a narrow focus of the hearing. He noted they thought they had a situation of where the City had a keen interest of not keeping an area of property sandwiched in between two commercial sites to go from a productive, useful state into a slum state. He said they were asking to revisit those issues with better evidence at a later date.

Mayor Drake said Tae had the opportunity for an appeal, and there was a hearing process where the PC acted. He explained it was highly unusual for the Council to call something like this up, especially when someone had the opportunity to appeal and chose not to.

Rhee said they had discussed this with the attorney, but the cost factor weighed heavily in the decision and it was Tae's desire to appeal. He maintained they did not know about the opportunity to piggyback on the NAC for an appeal. He said they understood they were asking for an extraordinary relief but thought the situation warranted it. He reported that his client put a lot of time and money into making the property cleaner and safer and making renovations to the structure itself. He said he applied to make the renovations so it would be a commercial use building, but when the application was denied he had simply run out of money.

Mayor Drake said he thought they were starting to retry the hearing and that was not why they were there that night.

Coun. Doyle asked if it was impossible to go back through the process.

Grillo said the Code allowed for a 1-year delay for re-filing, unless there was new evidence.

Mayor Drake said that would be a PC determination. He asked if Rhee was Tae's attorney.

Rhee said he was an attorney but he was acting only as a friend in this case.

Mayor Drake clarified that if Tae went back through the PC there would be no guarantee of what they would do with it, and if he didn't like the results he would have to appeal it and pay the fee.

Rhee said the alternative request he would like to make on behalf of Tae was to have the two orders denying the Variance and the Rezone to be made without prejudice, so they could file a reapplication sooner than the one-year time frame.

Coun. Doyle asked if the active involvement of the NAC could be enough to say this was new evidence.

Grillo said he was not sure if that would qualify, but hopefully the applicant and his attorney could come up with enough evidence. He noted that it would be up to the PC to see if it was enough. He said if the parties involved wanted to come in to re-file, staff would certainly place them before the PC again.

Coun. Doyle said he would appreciate that.

Mayor Drake asked if it could be adopted with denial with no prejudice.

Mark Pilliod, City Attorney, explained that he did not think the "without prejudice" wording had any meaning because the PC made the call as to whether it was a substantially similar application, if there was new evidence, or if circumstances changed. He pointed out that they could make it part of their order which in turn was subject to Council approval. He said if the Council made a decision to include "without prejudice," it really had no bearing at that point.

Coun. Brzezinski said if they wanted the discussion to take place to see if there was new evidence that would allow the application to go back again (without any guarantee of what the outcome would be), would the appropriate action be to remove the two agenda items. She asked if the Council had to either approve it or deny it.

Pilliod explained that the options were to approve the order on consent as presented or call it up for a hearing before the City Council, which the Mayor likened to an appeal.

Coun. Soth agreed that the order from the PC said nothing about with or without prejudice, so it would not apply. He noted that the order was signed on February 4, and the Code indicated that the appeal period began on the date the land use order was postmarked, which he assumed was February 4. He said ten days from that was February 14, so during that period someone should have picked it up (appealed it), and essentially it came to Council as a consent agenda item a month later. He pointed out that somewhere along the line one of Tae's attorneys should have known about the appeal period. He said, personally, as a member of Council he thought the remedies were exhausted and he was not inclined to call it up for a Council hearing until or unless the applicant had gone through the PC process with the new evidence as Grillo indicated.

Schouten said in many respects he agreed with Coun. Soth, and wished the second attorney had involved the NAC in the second hearing because they could have piggybacked him on an appeal by the NAC since the NAC was strongly behind him.

Coun. Soth said he thought the item should be left where it was on the consent agenda.

Coun. Brzezinski asked for them to tell her again if there was new evidence.

Grillo said the applicant had a pretty decent record at the PC level, and they would need to re-file and introduce evidence they did not submit with the other application. He noted they needed to make it clear to the PC that the evidence was worth reopening before the one-year time had expired. He said the PC would have to agree and then go to the merits of the case and any other evidence the applicant wished to submit. He explained that if they had an application they would place it in front of the PC and

ultimately the decision rested with PC if the new application constituted new evidence or a change in circumstance.

Mayor Drake said he got the impression Council would leave it on the consent agenda.

#### COUNCIL ITEMS:

Coun. Soth said he attended the National League of Cities Conference (NLC) and there were a number of issues discussed. He described the Electronic Commerce as a measure sponsored by Senator Wyden that put a moratorium on taxing Internet transactions for three years. He explained that if retail merchants could not compete with sales on the Internet it would have a definite effect on small businesses. He said another issue was the concerns with the 9-1-1 system and cellular phones being registered in an area other than where a possible emergency 9-1-1 call would come from. He explained that the 9-1-1 system can pinpoint the location of the phone, but the actual location of a cellular phone would likely not be the owner's address, which is what would register on the system.

Coun. Soth said there seemed to be a move in Congress to become friendlier with cities, counties and states in the relationships they had with each other. He commented that there was a vast difference between saying something and doing it. He noted it was a useful conference and he learned a lot there.

#### STAFF ITEMS:

Linda Adlard, Chief of Staff, asked Council to help lobby legislators for the Red Light Photo Enforcement Bill. She said they would need one or two Councilors to testify and then assistance was needed with e-mailing legislators. She asked for a letter from each of them that they supported the Red Light Bill.

Coun. Brzezinski congratulated Adlard on the House vote.

Coun. Soth added his thanks and gave his support.

#### CONSENT AGENDA:

Coun. Soth MOVED, SECONDED by Coun. Brzezinski that the consent agenda be approved as follows:

Minutes of the regular meetings of September 21, and September 28, 1998

- 99-65           Liquor Licenses – Annual Renewals
- 99-66           Liquor Licenses – New Outlets: Sun Teriyaki  
China Bay Restaurant & Lounge  
Nak Won Korean Restaurant
- 99-67           A Resolution Declaring Intent To Condemn Property Known As Lots 1, 2, 5 and 6, Block 3, Hocken's Third Addition and Lots 4, 5, 9 and 10, Block 1, Hocken's Fourth Addition, Beaverton, Washington County, Oregon, For Use For A Public Library, Parking and Related Facilities
- 99-68           RZ 980001 K Appliance Rezone on Murray
- 99-69           VAR 98001 K Appliance on Murray
- 99-70           CPA 98027/RZ 980026 Carlyle Group Annexation Comprehensive Plan Amendment and Rezone
- 99-71           Purchase of Library Computer Equipment for the Second Phase of the New WILInet Library System
- 99-72           Bid Rejection – Street Striping Project
- 99-73           Bid Award – Sidewalk Ramp Construction Project

Contract Review Board:

- 99-74           Consultant Contract Award – Westside Interceptor Storm Drainage Project No. 3 (SW Fisher Ave./SW 141<sup>st</sup> Avenue) Engineering Design and Construction Services
- 99-75           Bid Award – Parking Lot Reconstruction at Beavercreek Apartments for Lombard Avenue Extension, Project No. 3205

Mayor Drake noted that Coun. Stanton had questions that were addressed by staff (in record).

Coun. Doyle noted an error on the minutes of September 28 and noted a spelling error on AB 99-75.

Coun. Stanton abstained from the minutes.

Question called on the motion. Couns. Brzezinski, Doyle, Soth and Stanton voting AYE. The motion CARRIED with Coun. Stanton abstaining from the minutes. (4:0)

PUBLIC HEARINGS:

- 99-61           Home Depot/Public Annexation (ANX 99001)(Continued from 3/15/99)

Mayor Drake read a statement on annexations (in the record), and outlined the format of the hearing. He noted that it was a quasi-judicial land use action, and asked for any abstentions.

Mayor Drake said he had contact with Mr. Able an attorney with Stoel Rives.

Mayor Drake asked if anyone objected to Council's hearing the issue or the City's legal jurisdiction to do so.

No one came forward.

Grillo said the staff report had been entered into the record at the March 1 meeting and Council had the memo dated February 22, 1999. He noted that he had distributed a final map and legal description that evening, which had been corrected and the staff report would not be reviewed.

PROPONENT:

Grillo said they had indicated they were in agreement and they did not want to testify.

Frank Parisi, Attorney for Home Depot said he did not want to testify.

OPPONENT:

Don Waggoner, with 14400 NW Greenbrier Parkway, said he was with Leopold and Stevens, Inc., said he was there to talk about why the issue came up. He related that two years ago Home Depot asked if he would annex to the City of Beaverton. He reported that he responded that he would if Home Depot would pay him the extra property taxes up front for the next 10 years. He stated that the only reason they were doing this was because they wanted a larger sign. He noted that he could see the way the "fingers" were coming over to catch Home Depot. He said he thought the current City policy discouraged annexations where it would cause an unreasonable disruption of the City boundary (fingers or illogical shapes), but thought that was what they had with the current issue. He said they were annexing Hwy 26 and Bonneville Power Administration (BPA), and it seemed to him it was an unusual or illogical shape, but it did get Home Depot into the City. He expressed his hope that (if they went forward), the sign was not going to front on Hwy. 26, and emphasized that it was a large building painted a rather unusual color (orange), and did not need more signs. He explained his concern that it appeared it was a way of encircling Leopold and Stevens. He said all that would have to happen was get someone to come in on the south and Leopold and Stevens would be in the City and the taxes would go up.

Mayor Drake asked if he had purchased land on the end of Cornell Oaks, and if he understood the City had an agreement with Cornell Oaks that as parcels develop they would be annexed to the City.



Waggoner replied that was correct.

Mayor Drake noted that the property west of the BPA lines would automatically come into the City, but it would do nothing to encircle him.

Waggoner concluded it was a step, and he did know that after they developed the two lots at Cornell Oaks, they would be obliged to annex those two lots.

Coun. Soth addressed Waggoner's concern about island annexation, and explained that it was not the Council's policy to exercise the right that was granted under State law of annexing islands. He said Council preferred that people come to the City and ask to be annexed. He wanted to reassure Waggoner it was not a step to encircle.

Waggoner thanked Coun. Soth.

Coun. Doyle said he wanted to echo Coun. Soth's comments and in the five years he had been on Council he was not aware of the City annexing anyone who didn't want to be annexed.

Coun. Stanton said she agreed, but suggested that he get a copy of the minutes.

Waggoner said he appreciated the policy and hoped it would stay.

Steve Able, 900 SW 5<sup>th</sup> Ave., No. 2300, Portland, said he was an attorney representing ESI, Inc., who owned the three lots immediately east of Home Depot and to the north of Hwy. 26. He said over the past few weeks, they had worked with staff and they were satisfied with the proposal and did not object to the annexation. He noted they appreciated staff's openness to understanding the issues of ESI and willingness to modify the annexation proposal in order to allow it to proceed.

Mayor Drake asked if there was anyone else who wished to testify. He stated there had not been any evidence to need rebuttal.

Mayor Drake closed the public hearing.

Coun. Stanton MOVED, SECONDED by Coun. Soth approval of AB 99-61, Home Depot/Public Annexation (ANX 99001). Coun. Soth, Doyle, Stanton and Brzezinski voting AYE. Motion CARRIED unanimously. (4:0)

RECESS:

Mayor Drake called a recess at 7:39 p.m.

RECONVENED:

The regular meeting reconvened at 7:50 p.m.

99-76 Regional Center Text Amendment and Rezoning

Mayor Drake outlined the format for the hearing and said there would be a brief review of the staff report. He noted there would also be a recommended alternative to the Planning Commission (PC) recommendation, Council comments and questions. He commented that three evenings had been set aside for the hearing so everyone would have an opportunity to testify. He suggested it could be completed that evening, but March 29 and April 5 had also been set aside. He called for the staff report.

Grillo asked Development Services Manager Irish Bunnell to give a brief overview.

Bunnell introduced Senior Policy Planner Steven Sparks and gave a brief chronology of the Regional Center Text Amendment (in record). He stated the appeal before Council that night was an appeal of the Regional Center Multiple Use zoning text that the PC had recommended to the City Council. He noted that staff recommended the Council overturn the appeal and uphold the PC recommendation.

Mayor Drake called Mike Burton, Metro Executive Officer, and G.B. Arrington with Tri-Met to speak.

Burton noted that his comments related to the process and role a regional center plays, and congratulated the City and staff on the undertaking. He talked about the amount of activity in the Beaverton Area. He referred to the plan in place, specifically in three areas. He noted that Beaverton had housing and employment targets to meet, and explained that those were targets that were set up collectively by the 24 cities and three counties of the region. He reported that Beaverton had requested an exception to its employment targets both for the City as a whole and for the mixed-use areas. He noted the City would need to look at the housing and employment capacity.

Burton noted that the downtown area had been designated as a regional center, at the City's request. He explained regional centers served large market areas outside of the central city and were connected to it by high capacity transit, as well as existing and planned highways that came into it. He noted those centers were key elements to the success of the 2040 concept. He said a mix of uses both residential and commercial proximity to high quality transit service such as the two light rail stations in downtown Beaverton were effective ways to reduce traffic congestion and air pollution.

Burton explained that how Beaverton got to their goals/targets was up to the City and its citizens. He said Metro set broad goals and the concept of

how to meet those goals was up to design. He noted one of the things about 2040 was there was no cookie cutter aspect, getting there was something Beaverton had to do with their citizens. He specified a high quality pedestrian environment was a necessary element of a regional center to encourage people to use the downtown area preferably by reducing congestion in the area itself and the light rail stations offered one opportunity to do that. He encouraged Beaverton to consider the aspects of the two light rail stations as modes of transportation into the area to make the regional center work. He wished the City well in the final adoption of this.

G.B. Arrington, 4012 SE 17<sup>th</sup>, Portland, said he was with Tri-Met and had personally been involved with Bunnell's Regional Center Text Amendment chronology. He reported that Tri-Met had been an active partner in working with the City and had a lot at stake in the success of the Downtown Plan. He said Tri-Met's objective remained constant in that they wanted to help assure that the larger communities billion-dollar investment in light rail was reinforced and supported by the land uses around the stations. He reiterated Burton's statement about there being no cookie cutter and no one right way to plan around light rail when it came down to transportation and land use. He said the light rail system needed to respond to the community it was in. He noted the transit land use connection worked best when the transit line served as a catalyst to help move the individual community's vision of what they wanted to be, and if light rail was successful then it ended up as Beaverton's partner in getting there. He explained each light rail station had a different personality and development occurred at a different pace at each light rail station. He said to Tri-Met and the partners that participated in the Westside Station Area Planning, they measured successes in three ways. He said those were mix of uses, transition of more intensity and more transit friendly uses. He noted this would move Beaverton toward being a walk-able community, and to Tri-Met a pedestrian environment that worked was extremely important, because if one could walk there, transit could be used once you got there. He said Mayor Drake was often quoted as saying that people in Beaverton did not know where the downtown was and Tri-Met was hopeful adoption and implementation of the plan would clarify that. He noted there had been very positive responses to plans adopted in Hillsboro, Portland and Gresham and those places provided for a healthy transition from auto uses to transit friendly uses in the areas around the stations. He concluded by saying Beaverton was very well prepared to succeed by having developments like *The Round* around stations. He reported Tri-Met would not comment on the amendments that evening because they had not had time to read them, but would try to get detailed comments back to Council.

Tim Ramis, 1727 NW Hoyt, Portland, said an attorney representing Beaverton Citizens for a Better Downtown (BCBD), who filed the appeal. He thanked the City for the opportunity they had to raise issues and draft their own version of the proposed Code. He stated he had the opportunity to review the Mayor's alternative draft and found it performed an accepted

compromise function. He said not everyone in the group he represented had gotten a chance to read the alternative draft and he expected to see amendments from that group over the next 10 days. He noted the Biggi Family, Fred Meyer and the Burger King representatives had not had a chance to put forth their final comments.

Ramis explained the approach the group had taken to the regulations and said from the outset they shared the vision for change in the downtown but they were troubled with the device that was chosen to achieve that change. He specified that a city that wanted to change an area had three options. He noted the first option was the "subsidize option or urban renewal" model that meant a City could have anything they wanted, if they were willing to put enough public money into the gap of the rent that could be achieved in the market place, and what the city wanted to produce. He commented that was not what they suggested for this issue. He said the second option was a "take it off the shelf" idea of writing extensive non-conforming use provisions into the Code. He explained that the idea was to outlaw certain existing uses, hope that those uses got the message and essentially "got out of town," to be replaced by a new more progressive group anxious to spend money on the vision the city had. He said that was not an option they advocated because it had failed in so many places. He recommended a third alternative to use the power, vitality and financial success of existing business to build the vision the City wanted. He said to allow those businesses to remain successful but exact from them the price of building a new urban form the City could be comfortable with. He concluded by saying the draft alternative the Mayor proposed captured that approach in its broadest outlines.

Peter Fry, 2153 SW Main, #104, Portland, said he was a land use planning consultant and had served on the Multnomah Planning Commission for nine years and was involved in Goose Hollow Station Area Plan. He noted he was a planner volunteer for Portland's Downtown Residential Plan presented to the Portland City Council which was adopted unanimously even though at that time downtown had extreme conflicts going on regarding a parking structure that was now to be a park. He commented he had learned from his experience that consensus and focus created market, and that when there was fear of change, and conflict, the market froze and business went elsewhere. He said their goal was to bring the citizens of Beaverton together in a common cause and they attempted to do that in providing an alternative to the staff's recommendations. He noted there were two areas of difference in staff's proposal and those were adjustments and preexisting uses. He said if one watched the elevation of the staff document in allowing BCBD to work with them, then BCBD actually improved areas the staff was talking about.

Fry addressed the adjustment process and the preexisting use process. He explained every region had different processes and Beaverton had some very sophisticated processes that were further along than many of the other jurisdictions. He referred to the development review process looked at design and impact, which shaped development to meet the

surrounding areas. He said Beaverton also required neighborhoods to be involved. He said the BCBD group felt the adjustment process and the preexisting use process were further developed in other parts of the region and could be brought into Beaverton for a more holistic package. He explained that in the past people had used a variance process which required a hardship, in other words, you asked for a variance because for a reason you could not do what they were asking, such as a physical reality to the property. He said the adjustment process was different in that in the adjustment process you were asking for something different and in return you gave something in exchange. He said that was why the final criteria in the Mayor's draft were so critical and talked about mitigation of the impact of what had been asked for. He said their perception was that an adjustment process was not like a variance where one tried to get out of doing something but it was were you gave more in a different way and asked for an approval of that through a land use process.

Fry said the preexisting use process BCBD brought forth, was not designed to bring a property toward conformance. He noted both process were designed to move things into the future in a different way, a more human way that worked with the energy and creativity of Beaverton's people instead of telling the citizens what the future was. He explained the market was not like a "field of dreams," but it had to be built like a fire in that you had to get it burning, or you had to create it and that was the concept behind BCBD's draft.

Mayor Drake noted that he had contacts with Fry, Ramis and several of the key property owners behind the BCBD group and others.

Coun. Stanton said she spoke to a number of people on issues.

Coun. Soth had not talked to anyone about anything of substance. He expressed his personal philosophy of preferring to have things said in public.

Coun. Doyle said he had general conversation about procedure and process.

Coun. Brzezinski said she had no contacts.

Coun. Soth asked Fry to explain his remark about looking at a situation in which market forces played a great deal in determining when and how things happen.

Fry said the Code provisions were designed to cultivate market forces as opposed to simply respond to them and to direct people's energy within the goals of the Comprehensive Plan.

Coun. Soth said it was a facilitation measure.

Fry said that was correct.

Coun. Stanton complemented Fry on his statement regarding consensus and focus creating market.

Pilliod questioned the Regional Center preexisting uses in development in the Mayor's proposal. He noted he couldn't say with certainty that this language would supersede existing Code language on non-conforming uses, he wanted to look at that question more fully. He explained that he was puzzled by language that was recommended in the appellant's materials and apparently embraced by the Mayor's proposal. He said for the Mayor's proposal it was on page 26, Code section 20.295A (he read from the paragraph). He said what had been taken away was the language "because such uses are not considered to be transit supportive." He noted the language he was concerned about was the additional language "the future editions, expansions or enlargements shall be limited *to the property ownership* on which the use or development was operating" (language in question noted in italics) presumably on the date of adoption of such language. He reiterated he was puzzled by the term "property ownership" and asked if that meant that only the property owners who currently owned such uses were allowed future additions, expansions or enlargements.

Ramis explained the concept was to create a limitation on expansions and non-conforming uses limited to the property owned by the business as of the date of the ordinance. He said the idea was to prevent continuous purchases of additional land and expansions onto additional property.

Pilliod said it would be unusual to adopt a policy that was driven by pure property ownership. He explained that if it was to the lot configurations currently in existence and the uses that were associated with those lots that would be better understood. He noted that pure property ownership itself did not sound like something one would base a policy on.

Mayor Drake said the intention was to allow the current property owners of current business to continue to operate. He explained that it was not to allow joining properties and expanding a use that was preexisting and wasn't intended to double or triple in size for example, not one that was transit oriented long term.

Pilliod explained that he could have read it that if a property downtown was sold to someone else, the new owner would not be entitled to benefits of the language. He said he understood from Mayor Drake's comments that that was not what was intended.

Ramis said they were not wedded to any particular version of the language and were open to a better approach. He commented on the use of the term "preexisting use" as opposed to "non-conforming." He said at the PC there was concern that if the term "non-conforming" use was used in the ordinance there might be confusion about what parts of the City the rules applied to, because that term was used in other parts of the Code.

He explained they made the suggestion of using "preexisting use" to define the rules within this particular district as distinct from other areas of the City.

Coun. Stanton referred to Pilliod's comment on 20.295A Regional Center, and said she thought it referred to property ownership on which the use or development was operating meant that she could not lease a piece of adjoining property. She said she thought If you currently owned it you could stay there but not lease it out to anyone else.

Ramis explained that the concept would be to allow a new purchaser or lessee to continue to use the land in the manner in which it was used at the time the ordinance was adopted. He stated the idea was to use the ownership at the time of adoption as a method of defining the geographic area rather than a method of limiting who the people were.

Coun. Stanton replied she saw it as more of limiting the people because if she was the property owner she could not decide to retire and lease the property to someone else.

Russ Humbertson Jr., 4300 SW Murray Blvd., said he worked for his father's business Beaverton Toyota and Saturn of Beaverton. He said he supported the Mayor's version of the amendment.

Coun. Doyle asked attendees to be specific in referring to documents relating to the issue. He explained it was difficult to sort out which document they were referring to if they didn't particularly specify it.

Jack Franklin, 5025 SW Fairmount Dr., commented that he spoke from a customers/citizens point of view. He said he read documents from the PC and the BCBD group. He explained that his concern was that they spent over 100 years to get Beaverton to where it was currently, and now they were in a big rush to change everything overnight and they needed to take more time to make the changes. He noted it would be very difficult for the downtown businesses to maintain their viability and be accessible to their customers. He said customers had a lot of choices and they didn't have to go very far to shop. He said if people couldn't get their purchases to and from Beaverton by methods other than public transportation to the downtown area, that area would die. He stated that he thought the changes should be incorporated over a period of time, and if economic pressures provided the incentive for change then he thought there would be a viable downtown. He said business owners would show a profit on their businesses as long as customers could get to Beaverton conveniently. He stated that the important issue that night was to realize it would take some time to make the changes and they had 40 years to meet the goals, and as long as progress was being made there was time.

Ralph Holland, Jr. 13120 SW Berthold, said he represented Holland properties, and he spoke in favor of Mayor Drake's draft of the amendment that was presented to the merchants. He gave a brief chronology of

Holland enterprises, which detailed the Holland Family's history of creating commerce, and paying taxes for the past 50 years. He commented that in getting involved in the Text Amendment it appeared like there was a lot of take and not a lot of give. He said successful business had an opinion on the way things should be and that was why they were successful. He said they had people who came from as far as Salem to shop in Beaverton and they knew exactly where the downtown was. He explained that downtown business owners wanted to keep what they had and expand on it in not only a responsible way but also an effective way to help other small business entrepreneurs. He had a vision about the plan being like Orange Co., California, where each community had a downtown and the difference with Beaverton was that there had been a downtown for over 75 years. He said the amendment from the Mayor seemed to make it a little more palatable and it was a process they wanted to stay involved with. He emphasized that give and take made a sense of community.

Susan Cadell, 15455 NW Greenbrier Ct., said she grew up in the community. She reported that she represented the Beaverton Chamber of Commerce (Chamber) as the President. She respectfully requested that Council amend the decision of the PC and adopt the Regional Center Ordinance as proposed by the BCBD. She thanked Mayor Drake for the thoughtful compromise that worked for everyone. She said the Chamber had been involved since August 1998 and the downtown business owners came to the Chamber to seek their support. She noted some improvements over the original staff documents had been made; however the PC's changes had not gone far enough to protect the downtown businesses. She said the Chamber understood the codes to create a more pedestrian friendly downtown and she urged the Council to add the changes slowly, because change was accepted more gradually. She said that if the downtown businesses were driven out it would be very hard to get new businesses in. She said the Chamber supported the Mayor's amendment that phased Code changes over time, encouraged business to reinvest in their property, promoted the retention of local ownership, and supported the vision of a more pedestrian friendly downtown. She emphasized that the Beaverton Chamber's leadership was very interested in helping to maintain a healthy business climate for the community. She said that goal could only be accomplished with fair minded professionals serving on the City Council who sought to serve the entire community and everyone's best interest.

Greg Wanket, 4744 Lamont Ct, Lake Oswego, said he was with the Chevron Co. and thanked staff for helping to understand the history of the Text Amendment. He noted that he had reviewed Mayor Drake's revisions pertaining to minor automotive service, specifically the revisions to 20.20.45. He pointed out that the revisions would subject all new gas stations to a conditional use process in all districts in the regional center. He commented that while he would anticipate the conditional use processes would be challenging they felt it was a more rational and equitable solution than that which was originally offered. He reiterated Chevron supported Mayor Drake's revisions to 20.25.45.



Coun. Doyle commented that he could see why Wanket would support the CUP process verses what the original document contained.

Coun. Stanton stated that she grew up in a community that had gas stations in the parking structures and it was horrible.

Mayor Drake explained that if a gas station that was currently in business near the Beaverton Transit Station went out of business, it wouldn't make sense to prohibit a new gas station in that area, because Canyon Rd. experienced 45,000 to 50,000 cars traveling on daily. He said there was a great market there for a retail outlet and it made sense for people that would not use Light Rail. He commented that ultimately Beaverton would not be a downtown Portland, but the market and future citizens would determine what that it would be. He remarked there was a market for downtown gas stations and he thought others would agree.

Dominic Biggi, PO Box 687, Beaverton, said most of his remarks would be brought to Council with Attorneys Ramis and Fry at the next meeting and he supported the March 29 date. He referred to one technical item pertaining to the map section, and said his family's private street (Westgate Drive) should be exempted or officially put on the map. He commented he was in support of the Mayor's draft and felt it was a good starting step for future investment. He noted it had been an educational process for him and it was good to know what would be expected for future development.

Coun. Soth asked if Biggi's concern was the designation of private streets as pedestrian ways.

Biggi explained that was a concern and his first priority would be to have the street exempted.

Grillo reported that the BCBD group had previously made the request and he thought that it was part of the record. He noted that Biggi was asking for clarification in regards to the pedestrian route map and specifically (Biggi) would prefer that the private street be given consideration by the Council not to be on the pedestrian route map. He said the street was currently on the map, which was part of the record and could be taken under further consideration.

Mayor Drake said that issue could be taken up the next time. He thanked Biggi and the other key property owners and noted that the past fall they had indicated that they did not like anything about the Text Amendment and he had suggested if they did not like it they should come up with alternatives. He said they offered something constructive and it was a positive statement about the working relationship that collectively they had with the City.

Mayor Drake said that was all the testimony cards presented that evening. He specified he would not close the hearing that night and thought there would be potential amendments.

Mayor Drake asked for further testimony or questions that Council had of staff.

There were none.

Coun. Soth MOVED, SECONDED by Coun. Doyle to continue the hearing to March 29, 1999. Couns. Brzezinski, Soth, Stanton, and Doyle voting AYE. Motion CARRIED unanimously. (4:0)

#### RECESS:

Mayor Drake called a recess at 8:54 p.m.

#### RECONVENED:

The meeting reconvened at 8:56 p.m.

#### ORINANCES:

Mayor Drake noted that Coun. Stanton suggested pulling AB 99-80, An Ordinance Amending the Beaverton Code by Adding New Provision to Chapter four Relating to Telecommunications Service Providers.

#### Suspend Rules:

Coun. Soth MOVED, SECONDED by Coun. Doyle that the rules be suspended, and that the ordinances embodied in ABs 99-77, AB 99-78, and 99-79 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Brzezinski, Doyle, Soth, and Stanton voting AYE, the motion CARRIED unanimously. (4:0)

#### First Reading:

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|-------|---|
| 99-77 | An Ordinance Annexing a Parcel of Land Lying Generally West of the Existing City Limits to the City of Beaverton; ANX 98009 (Williams/173 <sup>rd</sup> Annexation) |
| 99-78 | An Ordinance Annexing a Parcel of Land Lying Generally South and West of the Existing City Limits to the City of Beaverton; ANX 98008 (Murray Ridge Annexation)     |

99-79           An Ordinance Annexing a Parcel of Land Lying Generally West of the Existing City Limits to the City of Beaverton; ANX 98006 (Lodato Annexation)

99-80           An Ordinance Amending the Beaverton Code by Adding New Provisions to Chapter Four Relating to Telecommunications Service Providers (Pulled from agenda, to be rescheduled.)

Second Reading and Passage:

Pilliod read the following ordinances for the second time by title only:

99-63           An Ordinance Amending Ordinance No. 4022, Which Amends Ordinance No. 1800, the Comprehensive Plan Map and Ordinance No. 2050, the Zoning Map, Designating the Property Commonly Known as Woodside Triangle, to Clarify Property Map Descriptions; CPA 98025 and RZ980022

99-64           An Ordinance Amending Ordinance No. 2050, the Development Code, Pertaining to Setbacks, Flexible Setbacks and Zero Setbacks; TA 980003 (Setback Amendments)

Coun. Soth MOVED, SECONDED by Coun. Doyle, that the ordinances embodied in agenda bills 99-63 and 99-64 now pass. Roll call vote. Couns. Doyle, Stanton, Brzezinski and Soth voting AYE, motion CARRIED unanimously. (4:0)

OTHER BUSINESS:

99-80           Pilliod asked for Council direction concerning AB 99-80.

Coun. Soth said he thought the concern was the GTE representative Jim McFarland thought there would be a double fee. He thought the letter in question should be examined more thoroughly.

Coun. Brzezinski said Bill Scheiderich, Assistant City Attorney, had regular communications with the telecommunications providers. She said it made her worry that perhaps he had not seen the letter from GTE dated December 1, 1998.

Coun. Doyle asked if there was a rush to get the ordinance placed. He preferred to take the time to keep the customers happy.

Coun. Stanton explained that it was a December letter written to her that the McFarland had submitted and felt he had not gotten a response on. She said she needed to know that GTE as a neighbor had a complete understanding of the ordinance.

Pilliod proposed that staff prepare a memo to Council touching on the points submitted in the GTE letter. He commented that it could be that the proposal in the ordinance would not make them 100% happy and he was

not sure they represented the City as their customer, but the City was their customer and also regulated them. He noted that he read it over the weekend, and he found a few minor issues and would like to get it out to Council with some information.

Coun. Stanton suggested the ordinance go back to other people as well.

Coun. Doyle said the McFarland vaguely referenced other concerns and asked if it was appropriate to find out what those other concerns were.

Mayor Drake said the concerns were referenced in the letter and there might be some points in the comments the Council might not want to give in on.

Coun. Stanton said it might be helpful for GTE and other providers if staff would reference the sections of the Telecommunications Act that applied in terms of rates, etc.

#### Lombard Avenue Sewer Project:

Sherry Arthur, 5225 SW Lombard, noted that Lombard Ave. had a sewer project going on for about a month. She said her concern was the contractor had stopped and she reported that a staff person told her the street would be torn up again for another water project. She said she understood Lombard would not be back in good condition until September. She commented that she was concerned about the City communicating with the citizens, and was concerned about cut-through traffic. She suggested the City put something in the newsletter about the problems.

#### ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 9:06 p.m.

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Darleen Cogburn, City Recorder

#### APPROVAL:

Approved this 21<sup>st</sup> day of June, 1999

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Rob Drake, Mayor